

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

DRAFT
10.1.21

Bill 6

LLS NO. 22-0184.01 Sarah Lozano x3858

INTERIM COMMITTEE BILL

Water Resources Review Committee

BILL TOPIC: "Procedure For Water Rights That Concern Headwaters"

DEADLINES: File by: 1/28/2022

A BILL FOR AN ACT

101 CONCERNING AN ADDITIONAL PROCEDURE FOR WATER RIGHTS
102 APPLICATIONS THAT CONCERN HEADWATERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

The bill creates a definition for "headwaters" and directs the state engineer to specify the headwaters of each river or tributary through rule-making. The bill also requires the state engineer to notify the water clerks of each water division of the headwaters determinations in their water division and to post the headwaters determinations to the state engineer's website by January 1, 2023. The bill also gives the state

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

engineer ongoing authority to adjust any headwaters determinations by rule-making.

Beginning in January 2023, and every January thereafter, the bill requires the water clerk in each water division to include in the water division's water court resume, the monthly notification of the water applications submitted in the division, an invitation to be included in the water division's headwaters notification list. The bill allows the water clerk to charge interested persons a fee, not to exceed \$12 per year, to be placed on the headwaters notification list.

On and after March 1, 2023, if there is an application filed that concerns the headwaters of any river or tributary in a water division (application), the bill requires the water clerk of that water division to:

- Send notice of the application within 21 days after the filing of the application;
- Post notice of the application on the water court's website; and
- Provide a mechanism on the water court's website that allows interested persons to publicly comment on the application until a ruling has been made on the application.

To the extent the referee or water judge can do so within the time period set forth in statute, the bill requires that the referee or water judge consider any comments made on the application before making a ruling on the application.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 37-92-312 as
3 follows:

4 **37-92-312. Additional procedure for water rights applications**
5 **that concern headwaters - notification list - opportunity for public**
6 **comment - rules - definition.** (1) AS USED IN THIS SECTION,
7 "HEADWATERS" MEANS THE SECTION OF SURFACE WATER BETWEEN THE
8 HYDROLOGIC DIVIDE AND THE FIRST SIGNIFICANT DIVERSION OF WATER
9 FROM A RIVER OR TRIBUTARY, AS DETERMINED BY THE STATE ENGINEER
10 BY RULE.

11 (2) (a) ON OR BEFORE JANUARY 1, 2023, THE STATE ENGINEER
12 SHALL:

1 (I) ADOPT RULES TO DETERMINE THE SECTION OF EACH RIVER OR
2 TRIBUTARY THAT CONSTITUTES THE HEADWATERS OF THAT RIVER OR
3 TRIBUTARY FOR THE PURPOSES OF THIS SECTION;

4 (II) FOR EACH WATER DIVISION, PROVIDE WRITTEN NOTICE BY
5 ELECTRONIC MAIL OF ALL HEADWATERS DETERMINATIONS MADE FOR THE
6 RIVER OR TRIBUTARY WITHIN THE WATER DIVISION TO THE WATER CLERK
7 OF THE WATER DIVISION; AND

8 (III) POST ALL HEADWATERS DETERMINATIONS ON THE STATE
9 ENGINEER'S WEBSITE.

10 (b) THE STATE ENGINEER MAY, BY RULE, ADJUST ANY
11 HEADWATERS DETERMINATION. ANY ADJUSTMENT MADE BY THE STATE
12 ENGINEER WILL NOT BE IN EFFECT UNTIL:

13 (I) WRITTEN NOTICE IS SENT BY ELECTRONIC MAIL TO THE WATER
14 CLERK OF THE APPLICABLE WATER DIVISION; AND

15 (II) THE ADJUSTMENT HAS BEEN POSTED TO THE STATE ENGINEER'S
16 WEBSITE.

17 (3) BEGINNING IN JANUARY 2023, AND EVERY JANUARY
18 THEREAFTER, THE WATER CLERK IN EACH WATER DIVISION SHALL INCLUDE
19 IN THE WATER DIVISION'S WATER COURT RESUME AN INVITATION TO BE
20 INCLUDED IN THE HEADWATERS NOTIFICATION LIST FOR THE WATER
21 DIVISION. PERSONS MAY ELECT TO RECEIVE NOTIFICATIONS BY
22 FIRST-CLASS MAIL OR ELECTRONIC MAIL AND MAY BE REQUIRED TO PAY A
23 FEE, NOT TO EXCEED TWELVE DOLLARS PER YEAR, TO BE PLACED ON THE
24 HEADWATERS NOTIFICATION LIST.

25 (4) ON AND AFTER MARCH 1, 2023, WITHIN TWENTY-ONE DAYS
26 AFTER THE FILING DATE OF ANY APPLICATION UNDER SECTION 37-92-302
27 (1)(a) THAT CONCERNS THE HEADWATERS OF ANY RIVER OR TRIBUTARY AS

1 DETERMINED BY RULE BY THE STATE ENGINEER UNDER SUBSECTION
2 (2)(a)(I) OF THIS SECTION, THE WATER CLERK OF THE WATER COURT IN
3 WHICH THE APPLICATION IS FILED SHALL:

4 (a) SEND NOTICE OF THE APPLICATION BY ELECTRONIC MAIL OR, IF
5 A PERSON HAS ELECTED, BY FIRST-CLASS MAIL TO PERSONS ON THE WATER
6 DIVISION'S HEADWATERS NOTIFICATION LIST ESTABLISHED UNDER
7 SUBSECTION (3) OF THIS SECTION;

8 (b) POST NOTICE OF THE APPLICATION ON THE WATER COURT'S
9 WEBSITE; AND

10 (c) PROVIDE A MECHANISM ON THE WATER COURT'S WEBSITE THAT
11 ALLOWS INTERESTED PERSONS TO PUBLICLY COMMENT ON THE
12 APPLICATION UNTIL A RULING HAS BEEN MADE ON THE APPLICATION.

13 (5) TO THE EXTENT PRACTICABLE WITHIN THE TIME PERIOD
14 DESIGNATED IN SECTION 37-92-303, THE REFEREE OR WATER JUDGE, AS
15 APPLICABLE, SHALL CONSIDER ANY PUBLIC COMMENTS PROVIDED UNDER
16 SUBSECTION (4)(c) OF THIS SECTION WHEN MAKING A RULING ON THE
17 APPLICATION.

18 **SECTION 2. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly; except
21 that, if a referendum petition is filed pursuant to section 1 (3) of article V
22 of the state constitution against this act or an item, section, or part of this
23 act within such period, then the act, item, section, or part will not take
24 effect unless approved by the people at the general election to be held in
25 November 2022 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.